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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO / OAKLAND DIVISION

16 EDUARDO GONZALEZ, ANTHONY
17 OCAMPO, ENCARNACION
18 GUTIERREZ, JOHAN MONTOYA,
19 JUANCARLOS GÓMEZ-MONTEJANO,
20 JENNIFER LU, AUSTIN CHU, IVY
21 NGUYEN, ANGELINE WU, ERIC
FIGHT, CARLA GRUBB, DAVID
CULPEPPER, PATRICE DOUGLASS,
ROBAIR SHERROD, BRANDY HAWK,
and ANDRE STEELE on behalf of
themselves and all others similarly situated,

22 Plaintiffs,

23 v.

24 ABERCROMBIE & FITCH STORES,
25 INC., A&F CALIFORNIA, LLC, A&F
26 OHIO, INC., AND ABERCROMBIE &
FITCH MANAGEMENT CO.

27 Defendants.
28

Case No. 03-2817 SI

**FOURTH AMENDED CLASS ACTION
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND
DAMAGES, FOR VIOLATIONS OF TITLE
VII OF THE CIVIL RIGHTS ACT OF 1964,
42 U.S.C. § 2000e; 42 U.S.C. § 1981; AND
CALIFORNIA FAIR EMPLOYMENT AND
HOUSING ACT**

DEMAND FOR JURY TRIAL

Individual and Representative Plaintiffs Eduardo Gonzalez, Anthony Ocampo, Encarnacion Gutierrez, Johan Montoya, Juancarlos Gomez-Montejano, Jennifer Lu, Austin Chu, Ivy Nguyen, Angeline Wu, Eric Fight, Carla Grubb, David Culpepper, Patrice Douglass, Robair Sherrod, Brandy Hawk, and Andre Steele (collectively “Plaintiffs”) on behalf of themselves and all others similarly situated, allege, upon personal knowledge as to themselves and information and belief as to other matters, as follows:

INTRODUCTORY STATEMENT

1. Defendants Abercrombie & Fitch Stores, Inc., A&F California, LLC, and A&F Ohio, Inc., and Abercrombie & Fitch Management Co. (hereinafter collectively identified as “Abercrombie,” “A&F,” or “the Company”) are a national retail clothing seller that discriminates against minority individuals, including Latinos, Asian Americans, and African Americans (hereinafter, collectively, “minorities”) on the basis of race, color, and/or national origin, with respect to hiring, firing, job assignment, compensation, promotion to in-store managerial positions, and other terms and conditions of employment by enforcing a nationwide corporate policy of preferring white employees for in-store sales and management positions, desirable job assignments, and favorable work schedules in its stores throughout the United States.

2. Abercrombie recruits, hires, and maintains a disproportionately white sales force (called Brand Representatives) who act as salespeople and recruiters of other potential store employees, and a disproportionately white store manager workforce (comprising Managers-in-Training, Assistant Managers, Store Managers, and General Managers), who manage the day-to-day operations of the stores.

3. Abercrombie systematically refuses to hire qualified minority applicants as Brand Representatives to work on the sales floor and store managers to manage the store, and discourages applications from minority applicants for such positions. To the extent that it hires minorities, it channels them to stock room and overnight shift positions and away from visible sales positions, keeping them out of the public eye. In addition, Abercrombie systematically fires qualified minority Brand Representatives and store managers in furtherance of its discriminatory policies or practices.

1 4. Abercrombie implements its discriminatory employment policies and
2 practices in part through a detailed and rigorous “Appearance Policy,” which requires that all
3 Brand Representatives must exhibit the “A&F Look.” The “A&F Look” is a virtually all-white
4 image that Abercrombie uses not only to market its clothing, but also to implement its
5 discriminatory employment policies or practices.

6 5. When people who do not fit the “A&F Look” inquire about employment,
7 managers sometimes tell them that the store is not hiring, or may provide them with applications
8 even though they have no intention of considering them for employment. If applicants who do
9 not fit the “A&F Look” submit applications, managers and/or Brand Representatives acting at
10 their direction sometimes throw them away without reviewing them.

11 6. Abercrombie publishes and distributes to its employees a “Look Book” that
12 explains the importance of the Appearance Policy and the “A&F Look,” and that closely regulates
13 the Brand Representatives’ and store managers’ appearance. The Company requires its managers
14 to hire and continue to employ only Brand Representatives and store managers who fit within the
15 narrow confines of the “Look Book,” resulting in a disproportionately white Brand
16 Representative workforce.

17 7. Abercrombie also uses visual media to reinforce to managers responsible
18 for recruitment, hiring, assignment, compensation, termination, and other terms and conditions of
19 employment of Brand Representatives and store managers the importance of adhering to the
20 virtually all-white A&F image in employment decisions. Each store prominently posts large
21 photographs of models – virtually all of whom are white. In addition, the Company publishes and
22 sells A&F Quarterly, a magazine/catalog featuring almost exclusively white models. Some stores
23 also display A&F TV, a television program played on a loop featuring Brand Representatives
24 who fit the “A&F Look.” Again, almost every Brand Representative shown is white.
25 Abercrombie corporate representatives and managers use these displays and publications to
26 portray and promote the “A&F Look” to employees, customers, applicants, and potential
27 applicants, to discourage and deter minority applicants, and to justify terminating minority
28 employees.

1 8. The Company rigorously maintains the “A&F Look” by careful scrutiny
2 and monitoring of its stores by regional and district managers and corporate representatives.
3 These managers and corporate representatives visit stores frequently to ensure, among other
4 things, that the store is properly implementing the Company’s discriminatory employment
5 policies and practices. These visits are referred to as “blitzes.” When managers or corporate
6 representatives discover that minority Brand Representatives or store managers have been hired,
7 they have directed that these employees be fired, moved to the stock room or overnight shift, or
8 have their hours “zeroed out,” which is the equivalent of termination.

9 9. The Company also scrutinizes and enforces compliance with the “A&F
10 Look” by requiring all stores to submit a picture of roughly 10 of their Brand Representatives
11 who fit the “Look” to headquarters each quarter. The corporate officials then select roughly 15
12 stores’ pictures as exemplary models that perpetuate the Company’s discriminatory employment
13 policies and practices. They then disseminate these pictures to the roughly 700 A&F stores. The
14 Brand Representatives in the pictures are almost invariably white. This practice and policy, like
15 the others described above, constitutes an official directive to give preference to white Brand
16 Representatives, store managers, and applicants, and to discriminate against minority Brand
17 Representatives, store managers, and applicants.

18 10. The A&F image is not limited to appearance; the Company accomplishes
19 its discriminatory employment policies or practices by defining its desired “classic” and “cool”
20 workforce as exclusively white. It seeks to hire Brand Representatives and store managers who
21 convey a certain image. This A&F image is decidedly non-minority. In order to perpetuate the
22 A&F image, Abercrombie identifies specific colleges from which each store should recruit its
23 employees, even though neither the Brand Representative position nor the store manager
24 positions require any of the skills or abilities acquired in college, much less in any specific
25 college. Abercrombie also encourages the recruitment and hiring of members of specified
26 overwhelmingly white fraternities and sororities, and of students who participate in certain
27 overwhelmingly white intercollegiate sports. However, the Company does not encourage
28 recruitment from fraternities, sororities, or sports teams with significant minority populations. To

1 further reinforce to store managers the importance of hiring white students who fit the
 2 Abercrombie image, the Company requires weekly reports on the number of Brand
 3 Representatives who attend targeted colleges and who fit the emphasis on fraternity/sorority
 4 membership and athletic team involvement.

5 11. This class action is accordingly brought by minority store employees and
 6 applicants for Brand Representative and Manager-in-Training positions on behalf of themselves
 7 individually and all minority applicants and employees against whom Abercrombie has
 8 discriminated on the basis of race, color, and/or national origin. Abercrombie has maintained and
 9 continues to maintain a pervasive policy or practice of discrimination based on race, color, and/or
 10 national origin in denying employment, desirable job assignments, job transfers, allocation of
 11 weekly hours, compensation, promotion to store management and other terms and conditions of
 12 employment to minorities in Abercrombie stores throughout the United States.

13 12. This action seeks an end to these discriminatory policies or practices, an
 14 award of backpay and front pay, as well as compensatory damages, punitive damages, and
 15 injunctive relief, including rightful place relief for all class members.

16 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

17 13. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
 18 and 1343.

19 14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). Members
 20 of the Plaintiff class reside in California and throughout the United States. Defendant
 21 Abercrombie is a Delaware corporation licensed to do business in California. It has retail stores
 22 throughout California and this District. Many of the acts complained of occurred in this State and
 23 this District and gave rise to the claims alleged.

24 15. Intradistrict assignment is proper in the San Francisco/Oakland Division
 25 because (1) some of the events and omissions that give rise to the claims of Plaintiff Anthony
 26 Ocampo occurred in San Mateo County, (2) some of the events and omissions that give rise to the
 27 claims of Plaintiff David Culpepper occurred in San Francisco County, and (3) some of the events
 28

1 and omissions that give rise to the claims of Plaintiff Patrice Douglass occurred in Alameda
2 County.

3 **PARTIES**

4 16. Plaintiff Eduardo Gonzalez is a minority resident of Palo Alto, California,
5 where he is a student at Stanford University. He was denied a position as a Brand Representative
6 at the Abercrombie store in the Valley Fair Mall in Santa Clara, California in August 2002, on
7 account of his race, color, and/or national origin.

8 17. Plaintiff Anthony Ocampo is a minority resident of Palo Alto, California,
9 where he is a student at Stanford University. He was denied a position as a Brand Representative
10 at the Abercrombie store in the Hillsdale Shopping Center in San Mateo, California, in or around
11 January 2000 on account of his race, color, and/or national origin. He was also denied a position
12 as a Brand Representative at the Abercrombie Store in the Glendale Galleria in Glendale,
13 California in June 2000 on account of his race, color, and/or national origin.

14 18. Plaintiff Encarnacion Gutierrez is a minority resident of South San
15 Francisco, California. He was denied a position as a Brand Representative at the Abercrombie
16 store in the Third Street Promenade in Santa Monica, California in June or July 2001, on account
17 of his race, color, and/or national origin.

18 19. Plaintiff Johan Montoya is a minority resident of Goleta, California, where
19 he is a student at the University of California at Santa Barbara. He was denied a position as a
20 Brand Representative at the Abercrombie store in the Topanga Mall in Canoga Park, California in
21 August or September 2002 on account of his race, color, and/or national origin.

22 20. Plaintiff Juancarlos Gomez-Montejano is a minority resident of Los
23 Angeles, California. He was employed as a Brand Representative at the Abercrombie store at the
24 Third Street Promenade in Santa Monica, California, from November 1998 to April 1999, when
25 he was terminated on account of his race, color, and/or national origin.

26 21. Plaintiff Jennifer Lu is a minority resident of Irvine, California, where she
27 is a student at the University of California at Irvine. She was employed as a Brand
28 Representative in the Abercrombie store in the Crystal Court Mall in Costa Mesa, California,

1 from September 2000 to February 2003, when she was terminated on account of her race, color,
2 and/or national origin.

3 22. Plaintiff Austin Chu is a minority resident of Irvine, California, where he is
4 a student at the University of California at Irvine. He was employed as a Brand Representative in
5 the Abercrombie store in the Crystal Court Mall in Costa Mesa, California from June 2001 to
6 March 2003, when he was constructively discharged on account of his race, color, and/or national
7 origin.

8 23. Plaintiff Ivy Nguyen is a minority resident of Anaheim, California, where
9 she is a student at the University of California at Irvine. She was employed as a Brand
10 Representative in the Abercrombie store in the Crystal Court Mall in Costa Mesa, California,
11 from June 2002 to February 2003, when she was terminated on account of her race, color,
12 national origin, and/or gender.

13 24. Plaintiff Angeline Wu is a minority resident of Irvine, California where she
14 is a student at the University of California at Irvine. She was employed as a Brand
15 Representative in the Abercrombie store in the Crystal Court Mall in Costa Mesa, California,
16 from August 2002 to February 2003, when she was terminated on account of her race, color,
17 national origin, and/or gender.

18 25. Plaintiff Eric Fight is a minority resident of Venice, California. He was
19 employed as a Brand Representative in the Abercrombie store in the Third Street Promenade in
20 Santa Monica, California, from roughly May 2003 to June 2003, but was channeled to a stock
21 room role (a non-sales position) due to his race or color. He was constructively discharged in or
22 around June 2003 when he learned that he was not allowed to work on the sales floor due to his
23 race or color and that he had been misled by the manager with whom he had interviewed into
24 believing that there were no sales floor Brand Representative positions available.

25 26. Plaintiff Carla Grubb is a minority resident of Bakersfield, California,
26 where she is a student at California State University at Bakersfield. She began working as a
27 Brand Representative in the Abercrombie store in the Bakersfield Valley Plaza Mall in
28

1 Bakersfield, California in November 2002. In or after January 2003, she was constructively
2 discharged on account of her race or color.

3 27. Plaintiff David Culpepper is a minority resident of Berkeley, California,
4 where he is a graduate student at the University of California at Berkeley. He was denied
5 positions as a Brand Representative at the Abercrombie store in the SF Shopping Center in San
6 Francisco, California in June 2003, and at the SF Stonestown Galleria in San Francisco,
7 California in March 2003 on account of his race or color.

8 28. Plaintiff Patrice Douglass is a minority resident of El Sobrante, California,
9 where she is a student at the University of California, Santa Cruz. She was denied a position as a
10 Brand Representative at the Abercrombie store in the Bay Street shopping area in Emeryville,
11 California in or about May 2003 on account of her race, color, and/or national origin.

12 29. Plaintiff Robair Sherrod is a minority resident of Carson, California, where
13 he is a student at California State University at Dominguez Hills. He was denied a position as a
14 Brand Representative at the Abercrombie store at the South Bay Galleria in Redondo Beach,
15 California in or about December 2002.

16 30. Plaintiff Brandy Hawk is a minority resident of Burlington, New Jersey,
17 where she is a student of the College of New Jersey. She was denied a position as a Brand
18 Representative at the Abercrombie store in Cherry Hill, New Jersey in or about May 2003.

19 31. Plaintiff Andre Steele is a minority resident of Waukegan, Illinois, and is a
20 graduate of DePaul University. He was hired by Abercrombie as a Brand Representative in 1998
21 and then became an Assistant Manager in 1999. He was denied a promotion to Store Manager at
22 the Gurnee Mills Mall store on or about September 1, 2002.

23 32. Defendant Abercrombie & Fitch Stores, Inc. is an Ohio corporation and a
24 wholly owned subsidiary of Abercrombie. Based on the representations of defendants, from July
25 1996 to August 2000, during which time it was a Delaware corporation, Abercrombie & Fitch
26 Stores, Inc. operated all California Abercrombie stores; from August 2000, when it became an
27 Ohio corporation, to May 2002, it operated all Abercrombie stores; and since May 2002, it has
28 operated all Abercrombie stores outside of California and Ohio.

1 race, color, and/or national origin, and/or who have been terminated on account of the policies or
2 practices complained of herein since February 24, 1999.

3 39. Plaintiffs are members of the class they seek to represent.

4 40. The members of the class identified herein are so numerous that joinder of
5 all members is impracticable. The number of class members is currently indeterminate, but is
6 certainly larger than can be addressed through joinder. As of March 26, 2004, Abercrombie had
7 approximately 30,200 employees. In addition, temporary employees are hired during peak
8 periods, such as the holiday season. Each of Abercrombie's roughly 700 stores employs very few
9 minority Brand Representatives and store managers, but each store, on average, annually receives
10 numerous applications from qualified minorities who are potential Brand Representatives and/or
11 store managers. Furthermore, as a result of Abercrombie's systematic discriminatory hiring
12 practices, an unknown number of minority applicants have also been deterred from applying.
13 Thus, although the precise number of qualified minority applicants who are not hired and/or who
14 are fired or otherwise discriminated against is currently unknown, it is far greater than can be
15 feasibly addressed through joinder.

16 41. There are questions of law and fact common to the class, and these
17 questions predominate over any questions affecting only individual members. Common
18 questions include, among others: (1) whether Abercrombie's policies or practices discriminate
19 against minority employees and applicants; (2) whether Abercrombie's use of the "A&F Look"
20 and image as an employment policy or practice discriminates against minority applicants and
21 employees; (3) whether Abercrombie's policies and practices violate Title VII; (4) whether
22 Abercrombie's policies or practices violate 42 U.S.C. § 1981; and (4) whether compensatory and
23 punitive damages, injunctive relief, and other equitable remedies for the class are warranted.

24 42. The representative Plaintiffs' claims are typical of the claims of the class.

25 43. The representative Plaintiffs will fairly and adequately represent and
26 protect the interests of the members of the class. Plaintiffs have retained counsel competent and
27 experienced in complex class actions, employment discrimination litigation, and the intersection
28 thereof.

1 44. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2)
 2 because Abercrombie has acted and/or refused to act on grounds generally applicable to the class,
 3 making appropriate declaratory and injunctive relief with respect to Plaintiffs and the class as a
 4 whole. The class members are entitled to injunctive relief to end Abercrombie's common,
 5 uniform, and unfair racially discriminatory personnel policies and practices.

6 45. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
 7 because common questions of fact and law predominate over any questions affecting only
 8 individual members of the class, and because a class action is superior to other available methods
 9 for the fair and efficient adjudication of this litigation. The class members have been damaged
 10 and are entitled to recovery as a result of Abercrombie's common, uniform, and unfair racially
 11 discriminatory personnel policies and practices. Abercrombie has computerized payroll and
 12 personnel data that will make calculation of damages for specific class members relatively
 13 simple. The propriety and amount of punitive damages are issues common to the class.

14 **CLAIMS OF REPRESENTATIVE PLAINTIFFS**

15 **Eduardo Gonzalez**

16 46. Plaintiff Eduardo Gonzalez, a Latino male, is a student at Stanford
 17 University. He applied for a position as a Brand Representative at the Abercrombie store in the
 18 Valley Fair Mall in Santa Clara, California on August 7, 2002. An Abercrombie manager
 19 suggested that he apply to work in the stock room or on the overnight crew in a non-sales
 20 position. Nevertheless, Mr. Gonzalez returned to the store for a group interview for the Brand
 21 Representative position on August 27, 2002. Mr. Gonzalez was not hired as a Brand
 22 Representative. Mr. Gonzalez was qualified for the job. Indeed, immediately following his
 23 Abercrombie interview, he crossed the hall within the same mall to apply for a job at Banana
 24 Republic, a similar retail clothing store that competes directly with Abercrombie for customers
 25 and employees. An employee of Banana Republic asked Mr. Gonzalez if he was interested in
 26 applying to work as a manager. He applied to work as a sales associate, and worked for Banana
 27 Republic in such a capacity through the academic year. Despite knowing of his qualifications,
 28 Abercrombie refused to hire Mr. Gonzalez based on his race, color, and/or national origin.

1 47. Abercrombie has discriminated against Mr. Gonzalez on the basis of his
2 race, color and/or national origin by denying him employment because he is not white.

3 48. On or about April 25, 2003, Mr. Gonzalez filed a charge of discrimination
4 with the Equal Employment Opportunity Commission ("EEOC"). Mr. Gonzalez received a copy
5 of his Notice of Right to Sue from the California Department of Fair Employment and Housing
6 ("DFEH"), dated April 29, 2003. Attached to this Complaint as Exhibit A and incorporated by
7 reference are copies of that charge and that notice. On or about December 30, 2003, the EEOC
8 issued Mr. Gonzalez a notice of right to sue. Attached to this Complaint as Exhibit P and
9 incorporated by reference is a copy of that notice.

10 **Anthony Ocampo**

11 49. Plaintiff Anthony Ocampo, a Filipino American male, is a student at
12 Stanford University. From December 1999 to January 2000, he worked part time as a Brand
13 Representative at the Abercrombie store in the Glendale Galleria in Glendale, California near his
14 family's home.

15 50. It is common practice at Abercrombie for college students to work at the
16 Abercrombie near their family home during vacations, and then to transfer to a store near their
17 college during the school year (or vice versa). Therefore, when Mr. Ocampo returned to
18 Stanford, he attempted to apply for a position as Brand Representative at the Abercrombie store
19 in the Hillsdale Shopping Center in San Mateo, California. Mr. Ocampo was told that he would
20 be contacted regarding a stock person position, but not for the position of Brand Representative.
21 Mr. Ocampo never was contacted for any position with Abercrombie, and when he contacted the
22 manager there, he was told that he would have to reapply.

23 51. Later that year, when he returned home for summer vacation in June of
24 2000, Mr. Ocampo applied to work once again at the Glendale Galleria Abercrombie. He was
25 told that there were "too many Filipinos" working at that location. He was not even given the
26 opportunity to submit a written application. Mr. Ocampo was qualified for the job of Brand
27 Representative, in part based on his prior experience doing that exact job at the Abercrombie
28

1 store in the Glendale Galleria. Abercrombie refused to hire Mr. Ocampo, despite knowing of his
2 qualifications, based on his race, color, and/or national origin.

3 52. Abercrombie has discriminated against Mr. Ocampo on the basis of his
4 race, color and/or national origin (a) by denying him employment because he is not white; and
5 (b) by refusing to transfer him from one store to another on the same terms as white Brand
6 Representatives.

7 **Encarnacion Gutierrez**

8 53. Plaintiff Encarnacion Gutierrez, a Latino male, graduated from the
9 University of California at Los Angeles in 2002 with a B.S. in Civil Engineering and from the
10 University of California at Berkeley in 2003 with an M.S. in Structural Engineering. He applied
11 to work as a Brand Representative at the Abercrombie store in the Third Street Promenade in
12 Santa Monica, California in June or July 2001, and later returned for a group interview.
13 Mr. Gutierrez was qualified for the job. Abercrombie refused to hire Mr. Gutierrez, despite
14 knowing of his qualifications, based on his race, color, and/or national origin.

15 54. During his initial visit to the store, Mr. Gutierrez observed that the staff
16 was virtually exclusively white. The manager who conducted the group interview was white. He
17 asked no questions regarding prior work experience or relevant skills. During the interview, the
18 manager asked a Filipino-American applicant whether he spoke English even though the
19 applicant had already answered several questions and demonstrated his fluency in English.
20 Mr. Gutierrez saw the manager write "phil" next to the applicant's name.

21 55. Abercrombie has discriminated against Mr. Gutierrez on the basis of his
22 race, color, and/or national origin by denying him employment because he is not white.

23 56. On or about May 21, 2002, Mr. Gutierrez filed a charge of discrimination
24 with the EEOC. Attached to this Complaint as Exhibit B, and incorporated by reference, is a
25 copy of that charge. On or about December 30, 2003, the EEOC issued Mr. Gutierrez a notice of
26 right to sue. Attached to this Complaint as Exhibit Q and incorporated by reference is a copy of
27 that notice.
28

Johan Montoya

57. Plaintiff Johan Montoya, a Latino male, is a student at the University of California at Santa Barbara. He applied for a position as a Brand Representative at the Abercrombie store in the Topanga Mall in Canoga Park, California in August or September 2002, participated in a group interview for the job and submitted a paper application. He was qualified for the job, in part based on his prior work experience as a sales associate at another retail establishment in the same mall. Abercrombie refused to hire Mr. Montoya despite knowing of his qualifications, based on his race, color, and/or national origin.

58. Abercrombie has discriminated against Mr. Montoya on the basis of his race, color, and/or national origin by denying him employment because he is not white.

59. On or about April 22, 2003, Mr. Montoya filed a charge of discrimination with the EEOC. Mr. Montoya received a copy of his Notice of Right to Sue from the DFEH, dated April 29, 2003. Attached to this Complaint as Exhibit C and incorporated by reference, are copies of that charge and that notice. On or about December 30, 2003, the EEOC issued Mr. Montoya a notice of right to sue. Attached to this Complaint as Exhibit R and incorporated by reference is a copy of that notice.

Juancarlos Gomez-Montejano

60. Plaintiff Juancarlos Gomez-Montejano, a Latino male, worked as a Brand Representative at the Abercrombie store at the Third Street Promenade in Santa Monica, California from November 22, 1998 until August 1999, while he was a student at the University of California at Los Angeles. During that time, he regularly worked roughly 10-15 hours per week. After noticing that his work hours had been reduced, Mr. Gomez-Montejano requested his personnel file. In August 1999 he learned that Company records showed that, unbeknownst to him, he had been fired from his position. He had never been previously informed of this termination, nor was he advised of any reasons for the termination.

61. In or around February or March 1999, Abercrombie representatives from Ohio corporate headquarters visited the store on a "blitz," and observed that there were photographs of each of the Brand Representatives posted in an employee area in the back. A

1 corporate official pointed to the pictures of four or five minority Brand Representatives, including
2 Mr. Gomez-Montejano, and directed store management to “zero them out.” This expression is
3 used within the Company to signify that the manager assigning work shifts should begin
4 assigning that person zero hours each week. In the following weeks, Mr. Gomez-Montejano
5 continued to inform his manager that he was available to work many hours a week, just as he had
6 throughout his tenure at Abercrombie; however, each week he received a schedule giving him
7 zero hours. Eventually, he realized that this “zeroed out” schedule might be permanent.
8 Therefore, he requested his personnel file in July 1999, and, after his second request, received a
9 copy of a company document stating that he had been terminated.

10 62. Abercrombie has discriminated against Mr. Gomez-Montejano on the basis
11 of his race, color, and/or national origin by (a) terminating his employment because he is not
12 white; and (b) refusing to give him desirable hours/assignments on the same terms as white Brand
13 Representatives.

14 63. On or about December 21, 1999, Mr. Gomez-Montejano filed a charge of
15 discrimination with the EEOC. Attached to this Complaint as Exhibit D, and incorporated by
16 reference, is a copy of that charge. After investigating, the EEOC issued a Letter of
17 Determination, finding that Abercrombie had discriminated against Mr. Gomez-Montejano and
18 against “Latinos and Blacks, as a class.” Attached to this Complaint as Exhibit E, and
19 incorporated by reference, is a copy of that letter. On or about December 21, 1999, the DFEH
20 issued to Mr. Gomez-Montejano a Notice of Right to Sue. Attached to this Complaint as
21 Exhibit F, and incorporated by reference, is a copy of that notice. On or about December 30,
22 2003, the EEOC issued Mr. Gomez-Montejano a notice of right to sue. Attached to this
23 Complaint as Exhibit S and incorporated by reference is a copy of that notice.

24 **Jennifer Lu**

25 64. Plaintiff Jennifer Lu is an Asian American female and a student at the
26 University of California at Irvine. She worked as a Brand Representative at the Abercrombie
27 store in the Crystal Court Mall in Costa Mesa, California from September 2000 to February 2003.
28

1 She was entrusted with responsibilities that only the most trustworthy and more senior staff were
2 given.

3 65. In or around January 2003, representatives from corporate and/or regional
4 headquarters visited the Crystal Court Mall store on an inspection tour, or “blitz.” These
5 headquarters/regional representatives reiterated to the Store Manager and other managers the
6 importance of having a predominantly white Brand Representative workforce, with fewer
7 minorities. Specifically, corporate employees communicated this directive by pointing to a
8 picture of a white model hanging in the store, and making a statement to the effect of “This is the
9 ‘A&F Look’ – you need to make your store look more like this.” Soon after this “blitz,” on or
10 about February 8, 2003, roughly five Asian American Brand Representatives, including Plaintiffs
11 Jennifer Lu, Austin Chu, Ivy Nguyen, and Angeline Wu were terminated and/or constructively
12 discharged, and one African American Brand Representative was transferred to a behind-the-
13 scenes stockroom position at another Abercrombie store. This action was not premised on any
14 legitimate business consideration, such as a lessened need for Brand Representatives or poor
15 work performance. The store hired several white Brand Representatives within two weeks of
16 firing Ms. Lu.

17 66. On February 8, 2003, Ms. Lu learned that she had been fired. She
18 informed the Store Manager that she was willing to be flexible with shift assignments, and that if
19 the staffing needs picked up in the summer months or other peak shopping seasons, she would
20 like to be considered. Mr. Richter told her that she was not needed at that time nor would she be
21 needed in the future.

22 67. Abercrombie has discriminated against Ms. Lu on the basis of her race,
23 color, and/or national origin by (a) terminating her employment because she is not white; and
24 (b) assigning her fewer hours than similarly-situated white Brand Representatives.

25 68. On or about April 22, 2003, Ms. Lu filed a charge of discrimination with
26 the EEOC. Ms. Lu received a copy of her Notice of Right to Sue from the DFEH, dated April 29,
27 2003. Attached to this Complaint as Exhibit G and incorporated by reference, are copies of that
28 charge and that notice. On or about December 30, 2003, the EEOC issued Ms. Lu a notice of

1 right to sue. Attached to this Complaint as Exhibit T and incorporated by reference is a copy of
2 that notice.

3 **Austin Chu**

4 69. Plaintiff Austin Chu is an Asian American male and a student at the
5 University of California at Irvine. He worked as a Brand Representative at the Abercrombie store
6 in the Crystal Court Mall in Costa Mesa, California from June 2001 to March 2003, when he was
7 constructively discharged.

8 70. Immediately after the January corporate “blitz” visit described herein in the
9 preceding paragraphs, Mr. Chu’s hours were reduced from the usual 10-15 hours per week he had
10 worked during his year and a half tenure to roughly zero hours per week. This “zeroing out”
11 began on or about February 8, 2003 and lasted until approximately March 26, 2003, during which
12 six-week period Mr. Chu was assigned only one four-hour shift (in contrast to his usual 60-90
13 hours for such a six-week period), despite notifying his managers each week of his availability
14 and interest in working the usual 10-15 hours per week. Mr. Chu attempted to gain more hours
15 by offering to fill in for those who were unavailable, and he was denied the opportunity to work
16 more hours. Because he was not assigned any hours to work, Mr. Chu tendered his resignation on
17 March 26, 2003. Mr. Chu was known as one of the most effective Brand Representatives in the
18 store due to his gregarious nature.

19 71. Abercrombie has discriminated against Mr. Chu on the basis of his race,
20 color, and/or national origin by (a) constructively terminating his employment because he is not
21 white; and (b) assigning him fewer hours than similarly-situated white Brand Representatives.

22 72. On or about April 22, 2003, Mr. Chu filed a charge of discrimination with
23 the EEOC. Mr. Chu received a copy of his Notice of Right to Sue from the DFEH, dated
24 April 29, 2003. Attached to this Complaint as Exhibit H and incorporated by reference, are
25 copies of that charge and that notice. On or about December 30, 2003, the EEOC issued Mr. Chu
26 a notice of right to sue. Attached to this Complaint as Exhibit U and incorporated by reference is
27 a copy of that notice.
28

Ivy Nguyen

73. Plaintiff Ivy Nguyen is an Asian American female and a student at the University of California at Irvine. She worked as a Brand Representative in the Abercrombie store in the Crystal Court Mall in Costa Mesa, California from approximately June 2002 until she was fired sometime during February 2003, shortly after the corporate “blitz” described herein in the preceding paragraphs.

74. Abercrombie maintained a target ratio for the number of male Brand Representatives relative to female Brand Representatives of 60:40. This policy was in writing on a board in the back of the store, designating the recruiting goal. In order to meet the target ratio, Brand Representatives were encouraged to recruit more men than women to work as Brand Representatives.

75. Immediately after the corporate “blitz” described in paragraph 62, corporate representatives reiterated the 60:40 policy to management at the Crystal Court Mall store by indicating that there were too many women working in the store.

76. Abercrombie has discriminated against Ms. Nguyen on the basis of her race, color, national origin, and/or gender by (a) terminating her employment because she is not white or male; and (b) assigning her fewer hours than similarly-situated white or male Brand Representatives.

77. On or about June 16, 2003, Ms. Nguyen filed a charge of discrimination with the EEOC. Attached to this Complaint as Exhibit I and incorporated by reference, is a copy of that charge. On or about December 30, 2003, the EEOC issued Ms. Nguyen a notice of right to sue. Attached to this Complaint as Exhibit V and incorporated by reference is a copy of that notice.

Angeline Wu

78. Plaintiff Angeline Wu is an Asian American female and a student at the University of California at Irvine. She worked as a Brand Representative at the Abercrombie store in the Crystal Court Mall in Costa Mesa, California from August 2002 to February 2003.

1 79. Ms. Wu worked approximately 5-10 hours a week, at least 2-3 shifts per
2 week. Shortly after the corporate “blitz” described herein in the preceding paragraphs, Ms. Wu's
3 hours were reduced and eventually “zeroed out.” Ms. Wu was then terminated in February 2003.

4 80. Abercrombie maintained a target ratio for the number of male Brand
5 Representatives relative to female Brand Representatives of 60:40. This policy was in writing on
6 a board in the back of the store, designating the recruiting goal. In order to meet the target ratio,
7 Brand Representatives were encouraged to recruit more men than women to work as Brand
8 Representatives.

9 81. Immediately after the corporate “blitz” described in paragraph 62,
10 corporate representatives reiterated the 60:40 policy to management at the Crystal Court Mall
11 store by indicating that there were too many women working in the store.

12 82. Abercrombie has discriminated against Ms. Wu on the basis of her race,
13 color, national origin, and/or gender by (a) terminating her employment because she is not white
14 or male; and (b) assigning her fewer hours than similarly-situated white or male Brand
15 Representatives.

16 83. On or about April 17, 2003, Ms. Wu filed a charge of discrimination with
17 the EEOC. Ms. Wu received a copy of her Notice of Right to Sue from the DFEH, dated
18 April 22, 2003. Attached to this Complaint as Exhibit J and incorporated by reference, are copies
19 of that charge and that notice. On or about December 30, 2003, the EEOC issued Ms. Wu a
20 notice of right to sue. Attached to this Complaint as Exhibit W and incorporated by reference is a
21 copy of that notice.

22 **Eric Fight**

23 84. Plaintiff Eric Fight is an African American male residing in Venice,
24 California. He worked as a Brand Representative in the stock room only (a non-sales position) at
25 the Abercrombie store in the Third Street Promenade in Santa Monica, California, from roughly
26 May 2003 to June 2003. He was constructively discharged in or around June 2003 when he
27 learned that he was not allowed to work on the sales floor due to his race or color and that he had
28

1 been misled by the manager with whom he had interviewed into believing that there were no sales
2 floor Brand Representative positions available.

3 85. In May 2003, Mr. Fight applied for a position as a Brand Representative at
4 the Abercrombie store in the Third Street Promenade in Santa Monica, California and participated
5 in a group interview for the job. Mr. Fight informed the manager conducting the interview that he
6 would rather work as a floor Brand Representative because he had substantial experience in sales
7 and did not have any experience working in a stockroom. The manager told Mr. Fight that he
8 would call him with a hiring decision within a week. Mr. Fight was qualified for the floor Brand
9 Representative job because of his prior work experience as a sales representative for comparable
10 retail clothing stores, including the Gap, Urban Outfitters, and Miller's Outpost. Abercrombie
11 refused to hire Mr. Fight as a Brand Representative despite knowing of his qualifications for the
12 position, based on his race or color.

13 86. A week later, not having heard from the store, Mr. Fight called the store to
14 inquire about the status of his application. The same manager told Mr. Fight that the store was
15 not hiring floor Brand Representatives. Roughly ten days later, the store's stock manager called
16 Mr. Fight and offered him a position in the stock room (a non-sales position). Mr. Fight accepted
17 the position and began working at the store in June 2003, expecting that the store would soon be
18 hiring floor Brand Representatives again and that he could reapply for such a position then. Upon
19 beginning work at the Third Street Promenade store, Mr. Fight observed that the floor Brand
20 Representative staff was virtually exclusively white.

21 87. In June 2003, on Mr. Fight's second day of work at Abercrombie, he met a
22 white floor Brand Representative who had just begun working at the store. Mr. Fight learned that
23 this new Brand Representative had recently been hired, and thus that the manager with whom he
24 had interviewed had deceived him about the availability of floor Brand Representative positions.
25 Mr. Fight concluded that the manager and the store would not consider him for floor Brand
26 Representative positions at that time or in the future due to his race or color. Mr. Fight thus
27 realized that he had been constructively discharged.
28

1 88. Approximately a week after his discharge, Mr. Fight was hired as a sales
2 associate for the Levi's Store at the Third Street Promenade, a similar retail clothing store that
3 competes with Abercrombie for customers and employees.

4 89. Abercrombie has discriminated against Mr. Fight on the basis of his race,
5 color, and/or national origin by denying him employment as a Brand Representative and
6 channeling him to a stock room position because he is not white.

7 90. On or about August 18, 2003, Mr. Fight filed a charge of discrimination
8 with the EEOC. Attached to this Complaint as Exhibit K, and incorporated by reference, is a
9 copy of that charge. On or about December 30, 2003, the EEOC issued Mr. Fight a notice of
10 right to sue. Attached to this Complaint as Exhibit X and incorporated by reference is a copy of
11 that notice.

12 **Carla Grubb**

13 91. Plaintiff Carla Grubb is an African American female and a student at
14 California State University at Bakersfield. She worked as a Brand Representative at the
15 Abercrombie store in the Bakersfield Valley Plaza Mall in Bakersfield, California from
16 November 2002 to January 2003, when she was constructively discharged.

17 92. From November 2002 to December 2002, Ms. Grubb worked as Brand
18 Representative. Each week she requested daytime shifts. However, she was usually assigned to
19 work night shifts, often starting approximately one hour before closing and continuing into the
20 late night. When Ms. Grubb began working for Abercrombie, she observed that she was the only
21 African American employee at the store; besides one Latino male Brand Representative, all the
22 other employees were white. She also noticed that white Brand Representatives were receiving
23 daytime hours and floor time. Although she was officially a floor Brand Representative,
24 Ms. Grubb spent the vast majority of her work time dusting and cleaning windows.

25 93. In approximately late December 2002, Ms. Grubb notified a manager that
26 she would not be available for shifts for the next few weeks, a practice that she had observed to
27 be unremarkable among Brand Representatives in the store. The manager granted her request and
28 stated that it would be "no problem." Upon returning to work roughly two weeks later, in January

1 2003, Ms. Grubb's hours had been reduced from the normal 15-20 hours per week to almost
2 nothing. She was assigned one 4-hour shift during the month of January. From the seven-month
3 period from the end of January to the present (August 2003), Ms. Grubb has been assigned no
4 shifts, despite notifying her managers each week of her interest in working up to 30 hours a week,
5 and indicating availability from roughly 8 am to 10 pm each day as well as requesting
6 opportunities to sign up for overnight shifts. Ms. Grubb has since learned that there was a
7 corporate "blitz" of the store in early January 2003, which the store managers knew about in
8 advance. The blitz involved a visit by Abercrombie corporate representatives, who took pictures
9 of the Brand Representatives to gauge the store's compliance with the "A&F Look."

10 94. In or around May 2003, Ms. Grubb asked her managers for an explanation
11 as to why she was not being assigned shifts. She was informed that she could not return to work
12 because the store was full of employees, although the store still considered her an Abercrombie
13 employee. At the time Ms. Grubb was aware of at least two white Brand Representatives at the
14 store who were assigned shifts of up to 40 hours a week, while Ms. Grubb, despite her continued
15 requests, was assigned no hours.

16 95. Abercrombie has discriminated against Ms. Grubb on the basis of her race,
17 color, and/or national origin by (a) constructively terminating her employment because she is not
18 white and (b) assigning her fewer hours than similarly-situated white Brand Representatives.

19 96. On or about August 18, 2003, Ms. Grubb filed a charge of discrimination
20 with the EEOC. Attached to this Complaint as Exhibit L, and incorporated by reference, is a
21 copy of that charge. On or about December 30, 2003, the EEOC issued Ms. Grubb a notice of
22 right to sue. Attached to this Complaint as Exhibit Y and incorporated by reference is a copy of
23 that notice.

24 **David Culpepper**

25 97. Plaintiff David Culpepper is a minority resident of Berkeley, California and
26 a graduate student at the University of California at Berkeley. He was denied positions as a
27 Brand Representative at the Abercrombie store in the SF Shopping Center in San Francisco,
28

1 California in June 2003, and at the SF Stonestown Galleria in San Francisco, California in March
2 2003 on account of his race or color.

3 98. Mr. Culpepper applied to work as a Brand Representative at the SF
4 Shopping Center store in late May 2002, September 2002, and early June 2003 by handing a
5 written application to an Abercrombie sales associate or manager each time. On the first visit, the
6 Abercrombie employee stated that she would pass the application to the manager. On the second
7 and third visits, the managers there told him that the store was not hiring and that there were no
8 positions available. Mr. Culpepper also applied to work at the SF Stonestown Galleria store in
9 June 2002, late November or early December 2002, and March 2003 by handing a written
10 application to an Abercrombie sales associate or manager each time. On the first and third visits,
11 the Abercrombie employees there told him that the store was not hiring and that there were no
12 positions available. On the second visit, the Abercrombie employee stated that the store would
13 contact him if they were interested. During none of these six application attempts did any
14 Abercrombie employee inform him of the existence of a group interview or ask about his
15 qualifications. Because Mr. Culpepper visited both locations frequently, he noticed many new
16 white Brand Representatives working at both stores, several of whom informed him that they had
17 been hired in recent weeks (during times immediately before and after each of his application
18 attempts). Mr. Culpepper was not hired nor was he ever contacted by Abercrombie.

19 99. By the time of his first application to work at Abercrombie, in May 2002,
20 Mr. Culpepper had substantial experience as a sales associate for comparable stores including
21 Banana Republic, Aeropostale, and Instant (a boutique clothing store in New York City). He was
22 then a recent graduate of the University of California at Berkeley.

23 100. In June 2002, within a few weeks of Mr. Culpepper's first application to
24 the SF Shopping Center, four white male friends of his with no retail experience applied to that
25 store and were all hired on the spot and scheduled for their first shifts.

26 101. Abercrombie has discriminated against Mr. Culpepper on the basis of his
27 race, color, and/or national origin by denying him employment because he is not white.
28

1 102. On or about August 18, 2003, Mr. Culpepper filed a charge of
2 discrimination with the EEOC. Attached to this Complaint as Exhibit M, and incorporated by
3 reference, is a copy of that charge. On or about December 30, 2003, the EEOC issued Mr.
4 Culpepper a notice of right to sue. Attached to this Complaint as Exhibit Z and incorporated by
5 reference is a copy of that notice.

6 **Patrice Douglass**

7 103. Plaintiff Patrice Douglass, an African American female, is a student at the
8 University of California, Santa Cruz. She applied for a position as a Brand Representative at the
9 Abercrombie store in the Bay Street shopping area in Emeryville, California in or about May
10 2003. She submitted a written application to a manager on duty and informed him of her
11 qualifications, including her prior retail experience. She was qualified for the job, in part based
12 on that retail experience. Abercrombie refused to hire Ms. Douglass despite knowing of her
13 qualifications, based on her race, color, and/or national origin.

14 104. The manager informed Ms. Douglass that May was “early” to apply for
15 summer employment. He also questioned Ms. Douglass why she had included two phone
16 numbers, when the “usual” applicant only listed one.

17 105. One week later, Ms. Douglass’s friend, who is white, requested an
18 application for summer employment as a Brand Representative at the same Abercrombie store.
19 An Abercrombie employee invited the friend to attend one of the group interviews that the store
20 held every Wednesday. The friend did so and was hired.

21 106. Abercrombie has discriminated against Ms. Douglass on the basis of her
22 race, color, and/or national origin by denying her employment because she is not white.

23 107. On or about December 23, 2003, Ms. Douglass filed a charge of
24 discrimination with the EEOC. Ms. Douglass received a copy of her Notice of Right to Sue from
25 the DFEH, dated December 23, 2003. Attached to this Complaint as Exhibit N, and incorporated
26 by reference, are copies of that charge and that notice. On or about December 30, 2003, the
27 EEOC issued Ms. Douglass a notice of right to sue. Attached to this Complaint as Exhibit AA
28 and incorporated by reference is a copy of that notice.

Robair Sherrod

108. Plaintiff Robair Sherrod, an African American male, is a student at California State University at Dominguez Hills. He applied for a position as a Brand Representative at the Abercrombie store in the South Bay Galleria in Redondo Beach, California in or around December 2002. He submitted a written application and participated in two group interviews. He was qualified for the job, in part based on his prior retail experience. Abercrombie refused to hire Mr. Sherrod despite knowing of his qualifications, based on his race, color, and/or national origin.

109. In or around January 2003, shortly after he had submitted his application, Mr. Sherrod was invited to a group interview. The manager who conducted the interview informed Mr. Sherrod that the Company would contact him within a week regarding his application. Approximately one month later, a store employee called Mr. Sherrod to invite him to a second group interview. Again, the manager who conducted the interview informed Mr. Sherrod that he would be called within a week regarding his application. No store employee has since contacted Mr. Sherrod regarding his application.

110. Abercrombie has discriminated against Mr. Sherrod on the basis of his race, color, and/or national origin by denying him employment because he is not white.

111. On or about December 1, 2003, Mr. Sherrod filed a charge of discrimination with the EEOC. Mr. Sherrod received a copy of her Notice of Right to Sue from the DFEH, dated December 30, 2003. Attached to this Complaint as Exhibit O, and incorporated by reference, are copies of that charge and that notice. On or about December 30, 2003, the EEOC issued Mr. Sherrod a notice of right to sue. Attached to this Complaint as Exhibit BB and incorporated by reference is a copy of that notice.

Brandy Hawk

112. Plaintiff Brandy Hawk, an African American female, is a student of the College of New Jersey. She applied for a position as a Brand Representative at the Abercrombie store in the Cherry Hill mall in Cherry Hill, New Jersey in or about May 2003. She submitted a written application to an employee at the store, indicating that she was a full time college student,

1 varsity athlete, possessed comparable retail experience, and was willing to work flexible hours.
2 She was qualified for the job, in part based on those qualities and that retail experience.
3 Abercrombie refused to hire Ms. Hawk despite knowing of her qualifications, based on her race,
4 color, and/or national origin.

5 113. Within a few days of submitting this application, Brandy Hawk was
6 interviewed for the position by Keri Renfroe, an Assistant Manager at the store. During this
7 interview, Ms. Renfroe informed Ms. Hawk that she would recommend Ms. Hawk for the Brand
8 Representative position. However, Abercrombie never hired Ms. Hawk. Ms. Hawk subsequently
9 learned that Ms. Renfroe's supervisor, Sherry Donchez, refused to hire Ms. Hawk to work on the
10 sales floor because Ms. Donchez believed that Ms. Hawk did not have the "image" Abercrombie
11 wanted to portray.

12 114. The store hired a white employee in Ms. Hawk's place.

13 115. Abercrombie has discriminated against Ms. Hawk on the basis of her race,
14 color, and/or national origin by denying her employment because she is not white.

15 116. On or about July 17, 2003, Ms. Hawk filed a charge of discrimination with
16 the EEOC. Attached to this Complaint as Exhibit CC and incorporated by reference is a copy of
17 that charge.

18 **Andre Steele**

19 117. Plaintiff Andre Steele is a minority resident of Waukegan, Illinois, and a
20 graduate of DePaul University. He was hired as a Brand Representative in December 1998 and
21 became an Assistant Store Manager in fall 1999. After filing a charge of discrimination in
22 November 2001, Mr. Steele was involuntarily transferred from the Gurnee Mills Mall store to a
23 location with a longer commute. On September 1, 2002, Abercrombie promoted a white
24 Assistant Manager to Store Manager of the Gurnee Mills Mall store without considering
25 Mr. Steele, who was equally qualified. Mr. Steele left Abercrombie in 2003.

26 118. During his years at Abercrombie, Mr. Steele observed that Abercrombie
27 routinely discriminated against minority individuals with respect to hiring and promotion.
28

119. On February 11, 2003, Mr. Stele filed a charge of discrimination with the EEOC alleging class wide discrimination and individual retaliation on the basis of race against Abercrombie. Attached to this Complaint as Exhibit DD and incorporated by reference is a copy of that charge. Attached hereto as Exhibit EE and incorporated by reference is a copy of the right issue letter Mr. Steele received for the EEOC on November 4, 2004.

GENERAL POLICIES OR PRACTICES OF DISCRIMINATION

120. The denials and abridgments of employment opportunities suffered by the Representative Plaintiffs are part of a general policy or practice of discrimination on the basis of race, color, and/or national origin in employment that has existed at Abercrombie since February 24, 2004. These are not isolated examples of employment practices or individual decisions. On the contrary, these incidents are representative of A&F's systematic discrimination against minorities and in favor of white applicants and employees, to create an overwhelmingly white Brand Representative and store manager workforce.

121. On September 13, 2001, the EEOC issued a Letter of Determination with respect to the EEOC charge filed by Plaintiff Juancarlos Gomez-Montejano, stating,

The preponderance of the evidence supports Charging Party's claim that he was denied a permanent position as a Brand Representative, denied an assignment and terminated because of his national origin. Moreover, evidence obtained during the course of the investigation revealed that *Latinos and Blacks, as a class, were denied permanent positions, denied assignments and treated in an unfair manner with regard to recruitment based on their race and national origin*, and that Respondent failed to maintain employment records as required by Title VII. Therefore, I have concluded that the evidence is sufficient to establish a violation of the above-cited statute.

Attached hereto as Exhibit E (emphasis added).

122. The EEOC sent this letter to Mr. Gomez-Montejano and to Abercrombie.

123. The EEOC issued additional Letters of Determination on September 30, 2004 and November 1, 2004. Attached to this Complaint as Exhibits FF to OO and incorporated by reference are copies of those letters.

124. The under-representation of minorities in Brand Representative and store manager positions throughout Abercrombie's approximately 700 stores in the United States

1 results from an intentional policy and practice of discrimination on the basis of race, color, and/or
2 national origin in hiring, initial job assignment, weekly hours allocation, internal job transfer,
3 inter-store transfer, and termination.

4 125. Abercrombie has pursued policies or practices on a continuing basis that
5 have denied or restricted job opportunities to qualified minority applicants and employees.

6 126. Such discriminatory policies or practices include, without limitation:

7 a. reliance on subjective, arbitrary, standardless, and unvalidated
8 criteria in making hiring decisions, focusing on whether applicants properly reflect the
9 predominantly white “A&F Look” and image rather than whether they would be responsible,
10 effective Brand Representatives and store managers who could perform their jobs well;

11 b. reliance on subjective, arbitrary, standardless, and unvalidated
12 criteria in making decisions in job assignments, weekly hour allocations, and ability to transfer
13 between stores focusing on whether employees properly reflect the predominantly white “A&F
14 Look” and image rather than whether they would be responsible, effective Brand Representatives
15 and store managers who perform their jobs well;

16 c. shunting minority applicants and Brand Representatives to stock
17 room and overnight shift positions where they are out of the public eye;

18 d. targeting white candidates for recruitment, both systemically (e.g.,
19 recruiting visits to college campuses and/or targeting of specific sororities and fraternities) and
20 individually (e.g., inviting individual customers in the store to apply to become Brand
21 Representatives and Managers-in-Training), but avoiding, ignoring, discouraging or dissuading
22 equally qualified minorities from applying;

23 e. use of the “Look Book,” the A&F Quarterly, and wall posters as
24 guidelines for management to select Brand Representatives on the basis of their appearance – e.g.,
25 white – as opposed to their qualifications for the job;

26 f. use of corporate “blitzes” to monitor and enforce stores’
27 compliance with the “A&F Look” and to weed out minority Brand Representatives and store
28 managers;

g. denying minority Managers-in-Training and other store managers promotion to store management; and

h. termination of employees based on race, color, and/or national origin without regard to their performance on the job.

FIRST CLAIM FOR RELIEF
(42 U.S.C. § 2000eet seq.)

127. Plaintiffs incorporate paragraphs 1 through 126 as alleged above.

128. This Claim is brought by all representative Plaintiffs, except Mr. Ocampo and Ms. Hawk, on behalf of themselves and the Class they represent.

129. Abercrombie has maintained a system that is intentionally discriminatory, subjective, standardless, and arbitrary with respect to recruitment, hiring, job assignment, promotion, transfer, weekly hour allocation, and termination. The system has an adverse disparate impact on minority applicants and employees. This system is not and cannot be justified by business necessity, but even if it could be so justified, less discriminatory alternatives exist that could equally serve any alleged necessity.

130. Abercrombie's discriminatory policies or practices described above have denied minority applicants and employees employment, job assignments, promotions, job transfers, and weekly hour allocations, resulting in the loss of past and future wages and other job benefits.

131. As noted above, the EEOC has determined that "the evidence is sufficient to establish" that Abercrombie has violated Title VII, because "Latinos and Blacks, as a class, were denied permanent positions, denied assignments and treated in an unfair manner with regard to recruitment based on their race and national origin." Exhibit E.

132. The foregoing conduct constitutes illegal, intentional discrimination as unjustified disparate impact prohibited by 42 U.S.C. § 2000e *et seq.*

133. Plaintiffs request relief as hereinafter provided.

SECOND CLAIM FOR RELIEF
(42 U.S.C. § 1981)

134. Plaintiffs incorporate paragraphs 1 through 126 as alleged above.

135. This claim is brought by all representative Plaintiffs on behalf of themselves and the Class they represent.

136. Abercrombie has maintained an intentionally discriminatory system with respect to recruitment, hiring, job assignments, promotions, transfers, weekly hour allocations, and termination.

137. The foregoing conduct constitutes illegal intentional discrimination with respect to the making, performance, modification, and termination of contracts prohibited by 42 U.S.C. § 1981.

138. Plaintiffs request relief as hereinafter provided.

THIRD CLAIM FOR RELIEF
(California Fair Employment and Housing Act, Government Code § 12940et seq.)

139. Plaintiffs incorporate paragraphs 1 through 126 as alleged above.

140. This claim is brought by all representative Plaintiffs except Mr. Ocampo, Ms. Hawk, and Mr. Steele on behalf of themselves and the subclass of California class members they represent.

141. Plaintiffs Eduardo Gonzalez, Johan Montoya, Juancarlos Gomez-Montejano, Jennifer Lu, Austin Chu, Angeline Wu and Andre Steele have received copies of their Right to Sue letters from the DFEH. The pendency of the EEOC investigations into Plaintiffs' charges tolled the time limits for filing civil actions pursuant to the Fair Employment and Housing Act. Plaintiffs have therefore timely complied with all prerequisites to suit.

142. Plaintiffs request relief as hereinafter provided.

FOURTH CLAIM FOR RELIEF
(42 U.S.C. § 2000eet seq.)

143. Plaintiffs incorporate paragraphs 1 through 126 as alleged above.

1 144. This Claim is brought by representative Plaintiffs Nguyen and Wu on
2 behalf of themselves individually.

3 145. Abercrombie has maintained a system that is intentionally discriminatory,
4 subjective, standardless, and arbitrary with respect to recruitment, hiring, job assignment, transfer,
5 weekly hour allocation, and termination. The system has had an adverse disparate impact on
6 Plaintiffs Nguyen and Wu on the basis of their gender. This system is not and cannot be justified
7 by business necessity, but even if it could be so justified, less discriminatory alternatives exist that
8 could equally serve any alleged necessity.

9 146. Abercrombie's discriminatory policies or practices described above have
10 denied Plaintiffs Nguyen and Wu employment, job assignments, job transfers, and weekly hour
11 allocations, resulting in the loss of past and future wages and other job benefits, due to their
12 gender.

13 147. The foregoing conduct constitutes illegal, intentional gender discrimination
14 as unjustified disparate impact prohibited by 42 U.S.C. § 2000e *et seq.*

15 148. Plaintiffs request relief as hereinafter provided.

16 **FIFTH CLAIM FOR RELIEF**
17 **(California Fair Employment and Housing Act, Government Code § 12940*et seq.*)**

18 149. Plaintiffs incorporate paragraphs 1 through 126 as alleged above.

19 150. This Claim is brought by representative Plaintiffs Nguyen and Wu on
20 behalf of themselves individually.

21 151. Abercrombie's actions with respect to Plaintiffs Nguyen and Wu constitute
22 gender discrimination in violation of FEHA. Plaintiffs Nguyen and Wu have received copies of
23 their Right to Sue letters from the DFEH. The pendency of the EEOC investigations into their
24 charges tolled the time limits for filing civil actions pursuant to the Fair Employment and
25 Housing Act. They have therefore timely complied with all prerequisites to suit.

26 152. Plaintiffs request relief as hereinafter provided.
27
28

ALLEGATIONS REGARDING RELIEF

153. Plaintiffs, and the class they seek to represent, have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiffs, and the class they seek to represent, are now suffering and will continue to suffer irreparable injury from defendant's discriminatory acts and omissions.

154. Abercrombie's actions have caused and continue to cause plaintiffs and all class members substantial losses in earnings, work experience, weekly hour allocations, and other employment benefits.

155. In addition, representative plaintiffs and the class suffer and continue to suffer humiliation, embarrassment, and anguish, all to their damage in an amount according to proof.

156. Abercrombie performed the acts herein alleged with malice or reckless indifference. Plaintiffs and class members are thus entitled to recover punitive damages in an amount according to proof.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs and the class pray for relief as follows:

157. Certification of the case as a class action on behalf of the proposed class;

158. Designation of Representative Plaintiffs as representatives of the class;

159. Designation of Representative Plaintiffs' counsel of record as class counsel;

160. A declaratory judgment that the practices complained of herein are unlawful and violate 42 U.S.C. § 1981;

161. A preliminary and permanent injunction against Abercrombie and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful policies, practices, customs, and usages set forth herein;

1 162. An order that Abercrombie institute and carry out policies, practices, and
2 programs that provide equal employment opportunities for all minorities, and that it eradicate the
3 effects of its past and present unlawful employment practices;

4 163. An order restoring plaintiffs and class members to their rightful positions at
5 Abercrombie, or, in lieu of reinstatements, an order for front pay benefits;

6 164. Back pay (including interest and benefits) for individual plaintiffs and class
7 members;

8 165. All damages sustained as a result of Abercrombie's conduct, including
9 damages for emotional distress, humiliation, embarrassment, and anguish, according to proof;

10 166. Exemplary and punitive damages in an amount commensurate with
11 Abercrombie's ability to pay and to deter future conduct;

12 167. Costs incurred herein, including reasonable attorneys' fees to the extent
13 allowable by law;

14 168. Pre-judgment and post-judgment interest, as provided by law; and

15 169. Such other and further legal and equitable relief as this Court deems
16 necessary, just, and proper.

17 Dated: November 8, 2004

18 Respectfully submitted,

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all issues so triable.

Dated: November 8, 2004

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